HANDBOOK

Rights for Individuals In Mental Health Facilities

Admitted Under the Lanterman-Petris-Short Act



California Department of Health Care Services

Your Rights as a Patient

If you have any questions or would like to make a complaint about a possible violation of your rights, please call the advocacy office listed on the back cover of this handbook.

Patients' rights law is composed of a complex and evolving system of statutes, regulations, and court decisions. This handbook should be considered a guide, but it may not accurately reflect all the rights available to persons at all times.

The person in charge of the facility in which you are receiving treatment is responsible for ensuring that all your rights in this handbook are protected. You should be informed of your rights in a language and a manner that you can understand:

- On admission to a facility
- When there is a change in your legal status
- When you are transferred to another unit or facility
- At least once a year

Please contact your patients' rights advocate if you believe that your rights may have been denied or violated, or if you have questions that may not be specifically addressed in this handbook.

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Introduction

If you are receiving voluntary or involuntary mental health services in one of the facilities listed below, you have the rights outlined in this handbook. Your rights may vary depending on your legal status or the type of facility you reside in. *Your rights may **not** be waived by your parent, guardian, or conservator.*

State Hospital
Acute Psychiatric Hospital
Psychiatric Unit of a General Acute Care Hospital
Skilled Nursing Facility
Special Treatment Program
Licensed Group Home
Adult Residential Facility
Social Rehabilitation Facility
Licensed Family Home
Adult Day Care Facility
Psychiatric Health Facility
Mental Health Rehabilitation Center
Community Treatment Facility
23-Hour Treatment Facility

You cannot be threatened or asked to give up any of your rights as a condition for admission or receiving treatment; however, you may choose not to exercise a specific right.

Access to the Patients' Rights Advocate

You have the right to see a patient's rights advocate who has no clinical or administrative responsibility for your mental health treatment and to receive his or her services. Your advocate's name and telephone number are located on the back cover of this handbook.

You have the right to contact the patients' rights advocate at any time. The facility where you are staying will provide you with assistance to ensure that you can exercise this right. You have the right to communicate with and to receive visits privately from your patients' rights advocate or attorney.

What to Do If You Have a Complaint

You have the right to complain about your living conditions, any physical or verbal abuse, any threats or acts of cruelty, or your treatment in the facility without being punished for voicing such complaints.

The patients' rights advocate is responsible for investigating and trying to resolve complaints concerning your rights. If the advocate is unable to help you with your concern, your complaint may be referred, with your permission, to another agency that can assist you.

If you are dissatisfied with the advocate's response to your complaint, you can request that the complaint be referred to the facility director or to the local mental health director.

Rights While You Are Involuntarily Detained

The following information pertains to individuals who are involuntarily detained.

72-Hour Hold or "5150"

When a person, as a result of a mental health disorder, is a danger to others, or to himself/herself, or gravely disabled, they may be taken into custody against their will for up to 72 hours for assessment and evaluation. When there is probable cause for involuntary detention, those who are authorized to take an individual into custody are:

- A peace officer
- A professional person in charge of a facility designated by the county for evaluation and treatment, or a member of the attending staff
- Designated members of a mobile crisis team
- A professional person designated by the county

While being detained, crisis intervention or placement for evaluation and treatment may be initiated.

The facility where you are being detained requires a written application stating why there is probable cause to believe that you, as a result of a mental disorder, are a danger to yourself or others, or are gravely disabled. If the probable cause is based on the statement of a person other than a police officer, a member of the attending staff, or a professional person, this person is liable for his/her statement in a civil action.

If you were brought into a mental health facility against your will due to the circumstances described above, you may be held for up to 72 hours for treatment and evaluation unless the person in charge can establish that you need an additional 14 days of mental health treatment (Welfare and Institutions Code Sections 5150 and 5250).

14-Day Certification for Intensive Treatment or “5250”

If a person is detained for 72 hours under the provisions of *Section 5150* of the *Welfare and Institutions Code* (described on pages 8-9 in this booklet) and has received an evaluation, he or she may be certified for no more than 14 days of intensive treatment related to a mental disorder or an impairment by chronic alcoholism under the following conditions:

- The professional staff of the facility that provides evaluation services has analyzed the person’s condition and found that the person is a danger to himself/herself or others or is gravely disabled.

- The person has been advised of the need for treatment on a voluntary basis, but is not willing or able to accept treatment.

If you are held beyond 72 hours, you have the right to remain in the hospital for voluntary treatment. If you do not want to stay voluntarily, the facility where you are staying will conduct a certification review hearing within four days of the end of your 72-hour hold. You

may be represented at this hearing by a patients' rights advocate or another person of your choice. You can also request to have family members present to help explain your circumstances (*Welfare and Institutions Code Section 5250).* If you want someone to join the hearing via telephone, let your advocate or a facility staff member know in advance and they will arrange the call.

Helpful Hint

If you request a writ of habeas corpus, a legal request asking a court determine whether you can be detained, you will give up your right to have a certification hearing. Talk to your advocate for more details about the writ process.

Re-certification for Intensive Treatment or "5260"

If during the 14-day certification you attempted or threatened to take your own life and if you remain an imminent threat of taking your life, your doctor may place you on an additional 14-day hold, which is known as a re-certification. You have the right to request a writ of habeas corpus (see above). **Please note that no hearing will take place for this hold** (*Welfare and Institutions Code Section 5260).*

Additional 30-Day Hold or “5270.15”

In some counties, after you have completed a 14-day period of treatment, you may be held for an additional 30 days if your doctor determines that you remain gravely disabled and you are unwilling to accept voluntary treatment. Another certification hearing will automatically be held. You have the right to have a patients’ rights advocate assist you at the hearing. You also have the right to request a writ of habeas corpus at any time during this period and to have a patients’ rights advocate or attorney assist you at the hearing (*Welfare and Institutions Code Section 5270.15).*

Post Certification for Dangerousness or “5300 et. al.”

If sufficient reason exists at the end of the 14-day certification to believe that you are a danger to others because of a mental disorder, the person who is in charge of the facility may petition the court to require you to remain in the facility for further treatment. This treatment is not to exceed 180 days. You have the right to representation by an attorney and to a jury trial (*Welfare and Institutions Code Section 5300 et. al.).*

Temporary Conservatorship

If the person in charge of the facility where you are staying believes that you may benefit from the services of a conservator because you remain gravely disabled, you may be placed on a temporary conservatorship (T-con) for up to 30 days. At the end of 30 days, a hearing will be held to determine whether you remain gravely disabled and whether a one-year conservatorship will be necessary. Your advocate or attorney can assist you with the conservatorship hearing process (*Welfare and Institutions Code Section 5352.1).*

Confidentiality

Your record is confidential and can be released only to you or to people who are involved in providing you with medical or psychiatric services. A court order or provisions in the law may be an exception. Other specific people may be given access to your records whenever you, your guardian, or your conservator give express consent by signing a form that authorizes the release of information.

You must also be informed of your right to have or not have other persons notified if you are hospitalized.

Medical Treatment

While you are staying in a facility, you have the right to prompt medical care and treatment.

Helpful Hints

- If you don't feel well or are in pain, let your doctor or a treatment staff member know right away.
- If you have any question about your treatment, talk to your doctor or a treatment staff member or ask your advocate for help.

Right to Refuse Treatment

Voluntary Patients

You can refuse any type of medical or mental health treatment, including medications; unless the situation is an emergency (see the “Definitions” section of this handbook for *emergency treatment*).

Involuntary Patients

You have the right to refuse medical treatment or treatment with medications (except in an emergency) unless a capacity hearing is held and a hearing officer or a judge finds that you do not have the capacity to consent to or refuse treatment. The advocate or public defender can assist you with this matter.

Conservatees

If you are on conservatorship and the judge has granted your conservator power to make mental health treatment decisions, you no longer have the right to consent to or refuse treatment. You should talk with your advocate or attorney for more information. In some cases, a judge may allow a patient on conservatorship to retain the right to consent to or refuse medical treatment.

All Patients

You have the right to refuse to take part in any research project or medical experiment. You also have the right to refuse electroconvulsive treatment (ECT) or any form of convulsive therapy. However, if a court has determined that you lack the capacity to make this decision, then ECT may be given *without* your consent. An advocate or a public defender can assist you with the hearing process *(Welfare and Institutions Code Section 5326.7).*

Medications and the Informed Consent Process

Voluntary Patients

If you are a voluntary adult patient, you have the right to consent to or refuse taking antipsychotic medications (except in an emergency). You may be treated with antipsychotic medications only after the hospital has completed the *informed consent* process, which is defined on the following page.

Involuntary Patients

If you are being detained against your will, you have the right to refuse treatment with antipsychotic medications *unless the situation is an emergency* or *a hearing officer or a judge has determined that you are incapable of making this decision.*

Helpful Hint

If your medication interferes with your ability to participate in daily activities or has other unpleasant side effects, let your doctor know.

The Informed Consent Process

Before you give your consent to take any antipsychotic medication, your doctor must first explain to you the following:

1. The reasons for your taking this medication and the benefits that you can expect
2. Your right to withdraw your consent at any time
3. The type and the amount of medication and how often you must take it
4. The common side effects from taking the medication, the effects that you are most likely to experience, and how long the doctor expects you will need to take the medication
5. Alternative treatments that are available (if any)
6. The potential long-term side effects of taking the medication

Helpful Hint
If you are asked to consent to taking medications without being given a full explanation, talk to your advocate.

Capacity Hearing for Medications

A capacity hearing, which is also called a Riese hearing, may be held to determine whether you can refuse treatment with medications. The capacity hearing is conducted by a hearing officer at the facility where you are receiving treatment or by a judge in court. The hearing officer will determine whether you have the capacity to consent to or refuse medication as a form of treatment.

You have the right to be represented at the capacity hearing by an advocate or by an attorney. Your representative will help you prepare for the hearing and will answer questions or discuss concerns that you may have about the hearing process.

If you disagree with the capacity hearing decision, you may appeal the decision to a superior court or to a court of appeal. Your patients' rights advocate or attorney can assist you with filing an appeal.

Helpful Hint

If you have any questions about your right to consent to or refuse medications or about the capacity hearing process, talk to your patients' rights advocate or the public defender.

Rights That Cannot Be Denied

Persons with mental illness have the same legal rights and responsibilities that are guaranteed all other persons by the federal and state constitution and laws unless specifically limited by federal or state laws and regulations (*Welfare and Institutions Code Section 5325.1).*

The Right to Humane Care

You have the right to dignity, privacy, and humane care. You also have the right to treatment services that promote your potential to function independently. Treatment must be provided in ways that are least restrictive to you.

Helpful Hints

- If you feel that your treatment is too restrictive, talk to your doctor and find out how your treatment can be changed,talk to the patients' rights advocate, or file a complaint.

The Right to Be Free from Abuse or Neglect

You have the right to be free from abuse, neglect, or harm, including unnecessary or excessive physical restraint, isolation, or medication. Medication shall not be used as punishment, for the convenience of staff, as a substitute for treatment, or in quantities that interfere with the treatment program. You also have the right to be free from potentially harmful situations or conditions.

Helpful Hint
If you believe that you have suffered abuse or neglect in the facility or feel that your treatment is more restrictive than necessary, talk to your advocate or let a staff member know.

The Right to Social Activities and Recreation

You have the right to social interaction and participation in activities within the community or within the facility if you are hospitalized.

You have the right to physical exercise and recreational opportunities.

The Right to Education

You have the right to participate in appropriate programs of publicly supported education.

The Right to Religious Freedom and Practice

You have the right to religious freedom and practice.

Helpful Hint

Your right to practice your religion cannot be denied by anyone. You may not be pressured in any way to participate in religious practices, and you do not have to accept a visit from representatives of any religion. After you are admitted to a facility, let the staff know as soon as possible whether you have any special religious preferences.

The Right to Be Free from Discrimination

You have the right to receive mental health services without discrimination on the basis of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, medical condition, or sexual orientation.

Helpful Hint

Talk with a staff member or your advocate if you have any concerns about discrimination.

Rights That May Be Denied with Good Cause

Unless the facility's staff and the doctor have good cause to do so, you cannot be denied any of the following rights:

Clothing

You have the right to wear your own clothes (except as prohibited by law in some state hospitals).

Money

You have the right to possess and spend a reasonable sum of your own money or personal funds for canteen expenses and small purchases.

Visitors

You have the right to see visitors each day, according to the facility's visitation policy.

Helpful Hint

Please check with the facility where you are staying for more details on visiting times and policies.

Storage Space

You have the right to have access to storage space for your personal belongings.

Personal Possessions

You have the right to keep and use your own personal possessions, including your own toilet articles.

Telephone

You have the right to reasonable access to a telephone to make and receive confidential calls or to have such calls made for you.

Helpful Hint

If telephones are not placed where you can make private phone calls, ask a facility staff member where you can have privacy when making your call.

Mail

You have the right to receive mail and unopened correspondence.

Writing Materials

You have the right to have letter-writing materials, including stamps, made available to you.

Good Cause

Good cause for denying any of the rights means that the professional person in charge has a good reason to believe that allowing a specific right would cause:

1. Injury to that person or others; or
2. A serious infringement on the rights of others; or
3. Serious damage to the facility;

and there is no less restrictive way to protect against these occurrences.

Your rights cannot be denied as a condition of admission, a privilege to be earned, a punishment, a convenience to staff, or a part of a treatment program. A denial of a right can be made only by the person authorized by law or regulation to do so, and this denial must be noted in your treatment record. If one of your rights is going to be denied, a staff member must inform you. Any denial of a right must be reviewed on a regular and ongoing basis. Once good cause no longer exists, your right(s) must be restored.

Helpful Hint

If you feel that you have had a right unfairly denied or you would like a right restored, you can talk to your advocate or a staff member or file a complaint.

Definitions

Advocate: The person mandated by state law to ensure that mental health patients maintain their statutory and constitutional rights.

Antipsychotic Medication: Any medication that is customarily prescribed for the treatment of mental disorders, emotional disorders, or both.

Capacity: A determination of whether a person is:

- Aware of his or her situation;
- Able to understand the risks, benefits, and alternatives to the proposed treatment; and,
- Able to understand and knowingly and intelligently evaluate information that concerns giving consent, and to otherwise use rational thought processes to participate in treatment decisions.

Conservator. A person who is appointed by a court to take care of a patient, his or her property, or both when the patient is considered to be gravely disabled as a result of a mental disorder or an impairment by chronic alcoholism. A conservator may be a public agency representative or a private person. A conservator may make decisions about a patient's treatment, placement, and finances.

Emergency Treatment: Action to impose treatment, despite a person's objection, that is immediately necessary for the preservation of life or the prevention of serious bodily harm to the patient or to others, and it is impractical to first gain consent from the patient.

Gravely Disabled: A person who is unable, by reason of a mental disorder, to provide for his or her own food, clothing, or shelter. A person is not gravely disabled if someone else is willing and able to provide these basic necessities.

Hearing Officer: A superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer who makes decisions in mental health certification review and capacity hearings.

Imminent: About to happen or ready to take place.

Informed Consent: A process by which a patient is informed of any antipsychotic medications that have been prescribed to him or her and the patient's consent is obtained. The informed consent form states that the patient was informed about the prescribed medication(s), including the type of medication, the quantity, the benefits or side effects of the medication, and other forms of treatment that are available. The mental health facility is required to keep the signed consent form in the patient's record.

Petition for Writ of Habeas Corpus: A legal request for release from a facility or an institution that a patient can file himself/herself or with the help of an attorney, an advocate, or a facility staff member. If accepted, the writ will entitle a patient to a hearing in a superior court.

Probable Cause: The evidence that justifies issuing a 14-day certification. The mental health facility must establish specific facts that would reasonably lead someone to believe that a person is dangerous to himself/herself or others, or is gravely disabled.

Notes

Notes

County Patients' Rights Advocate Contact Information

If you are unable to reach your patients' rights advocate, contact:

California Office of Patients' Rights
1831 K Street
Sacramento, California 95811-4114
Telephone: (916) 504-5810
http://www.disabilityrightsca.org/

Or

Department of Health Care Services
Mental Health Services Division Ombudsman
Telephone: (800) 896-4042
Email: mhombudsman@dhcs.ca.gov

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